

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

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FILE: B-183896, 183907

DATE: July 18, 1975

MATTER OF: Eastman Kodak Company

97357

DIGEST:

Claim for rental charges for equipment utilized at defunct agency facility whose records have been destroyed may be allowed in part where record shows that claimant made timely request for payment of portion of claim and agency failed to respond to claimant's request. Remainder of claim is for disallowance since claimant did not make timely demand for payment. By the time payment was requested and claim considered by the Navy complete records of lease transactions were no longer available to verify claim.

Eastman Kodak Company has appealed our Transportation and Claims Division settlement of October 18, 1974, in which its claim in the amount of \$5,565.10, representing rental charges for microfilm equipment and maintenance under Purchase Order Nos. N62738-68-F-0214, -69-M-0201 and -69-F-0201, utilized by the Naval Weapons Center Corona Laboratories, Corona, California, was denied. The purchase orders arose from yearly contracts covering the period July 18, 1968 through June 30, 1969. The contracts covered rental and service of other items which are not involved here.

The Transportation and Claims Division settlement in denying the claim stated that:

"The record shows that your invoices under the cited Purchase Orders date from January 1, 1968, through June 1, 1969. The earliest evidence of an inquiry regarding these allegedly unpaid invoices is dated November 10, 1972, copy attached. The Department of the Navy has advised us that the records with which to verify performance and/or delivery of goods or services and charges therefor are no longer available.

"It has long been established that where, as here, the records necessary to either justify or refute a claim have been destroyed pursuant to law or have become unavailable due to the lapse of time, the accounting officers of

the Government, in the absence of clear and satisfactory evidence of validity and nonpayment, may not give the matter favorable consideration where the claimant has failed to act on his claim for a period of years. Therefore, your claim may not be allowed on the present record."

The Eastman Kodak Company letter of February 11, 1975, appealing the denial of its claim, forwarded copies of documents which, it believes substantiates that collection efforts were made as early as 1968 and 1969, and that the claim has not been paid.

The difficulty here stems from the fact that the Government has no records to confirm or refute the claim since the Naval Weapons Center, Corona Laboratory was disestablished in 1970 and all records were transferred to the Naval Weapons Center, China Lake, and the records at China Lake were destroyed after a lapse of time as permitted by regulation.

We have reviewed the documents submitted by Eastman Kodak in support of its claims and have concluded that outstanding invoices in the amount of \$2,831.66, under Purchase Orders 69-M-0201 and 69-F-0201 may be paid. However, we do not find a sufficient basis for paying the amount of \$2,733.44 claimed in invoices under Purchase Order 68-F-0214.

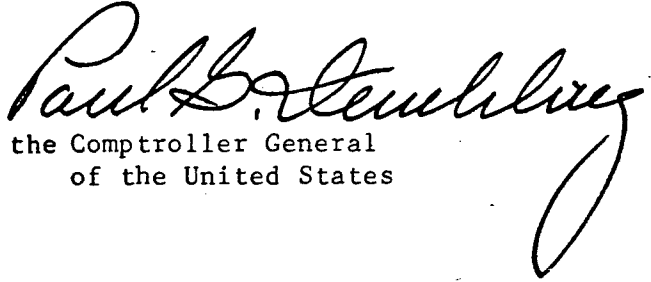
As to the allowed portion of the claim the firm requested payment of a number of outstanding 1969 invoices by letter of October 14, 1969. This letter referred to two of the invoices involved here. Apparently this letter was returned to Eastman Kodak with a notation by the Navy that the two invoices had been transmitted for payment. However, by letter of February 25, 1970, the firm requested payment for all of the claimed outstanding invoices under Purchase Orders 69-M-0201 and 69-F-0201. Written requests for payment were made in January 1972 and thereafter until the matter was ultimately referred for settlement by this Office. In our opinion the Navy's inability to determine whether this claim has merit is due to its failure to respond to the claimant's repeated and timely requests for payment. Under these circumstances, we believe that the claim should be allowed on the basis of the evidence presented.

On the other hand, the evidence is not sufficient to support payment at this time of the invoices for the first five months of 1968 under Purchase Order 68-F-0214 since the first clear inquiry to the Navy regarding payment was not made until January 1972. Although Eastman Kodak has submitted a copy of a document which it believes is a memorandum of a phone call placed on November 28, 1968, requesting payment, this document does not contain a record

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of a conversation to this effect which may have taken place. It merely contains a list of invoice numbers and amounts, the applicable credits, the balance due (which does not correspond with the amount now claimed), a telephone number and the date of November 12, 1968. Thus it appears that the claimant failed to make a timely demand for payment of this claim. By the time payment was requested by Eastman Kodak and the claim was considered by the Navy, it appears that the complete records of the lease transactions were not available to verify the claim.

In the circumstances, the disallowance of October 18, 1974, is sustained as to the claim for \$2,733.44 under Purchase Order 68-F-0214. However, we are instructing our Transportation and Claims Division to state a settlement allowing the amount of \$2,831.66, claimed under the other two purchase orders.


For the Comptroller General
of the United States